

Members:

Rep. Mark Kruzan, Chair
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
Sen. Kent Adams
Sen. Beverly Gard
Sen. Glenn Howard
Sen. Vi Simpson



Lay Members

Michael Carnahan
Randy Edgemon
John Fekete
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
John Hamilton
Kerry Michael Manders
Regina Mahoney
David Rector
Gary Reding
Alice Schloss
David Benshoof
Lynn Waters

LSA Staff:

Tim Tyler, Attorney for the Council
Kristin Breen, Fiscal Analyst for the Council

Authority: P.L.248-1996 (SEA 138)

ENVIRONMENTAL QUALITY SERVICE COUNCIL

**Legislative Services Agency
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MEETING MINUTES

Meeting Date: December 3, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 7

Members Present: Rep. Mark Kruzan, Chairperson; Rep. Dale Sturtz; Rep. Richard Mangus; Sen. Beverly Gard; Sen. Kent Adams; Michael Carnahan; Randy Edgemon; John Fekete; Hon. Jack Fowler; Marvin Gobles; Max Goodwin; John Hamilton; Regina Mahoney; Kerry Michael Manders; David Rector; Gary Reding; David Benshoof.

Members Absent: Rep. David Wolkins; Sen. Vi Simpson; Sen. Glenn Howard; William Goffinet; Alice Schloss; Lynn Waters.

Representative Mark Kruzan, Chairperson of the Environmental Quality Service Council (EQSC), called the meeting to order at 1:52 p.m. Representative Kruzan then asked John Hamilton, Commissioner of the Indiana Department of Environmental Management (IDEM), to present the monthly IDEM Commissioner's report.¹

Mr. Hamilton said the report contained media advisories, the December IDEM

¹ A copy of the report is on file with the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

calendar, and a letter from the Indiana Attorney General concerning Indiana's audit privilege law that would be discussed later. He stated that because the EQSC meeting was taking place so early in December, many of the permit charts and other features usually included in the report were not available yet. Mr. Hamilton said this material would be mailed to EQSC members later in the month. Mr. Hamilton did say IDEM did not issue any late permits in November.

Mr. Hamilton said one of the media advisories included in the report concerned the announcement that IDEM will join the United States Environmental Protection Agency (EPA) to build and operate a \$2.1 million water treatment plant at the Lemon Lane Landfill in Monroe County. He said the plant will remove polychlorinated biphenyls (PCBs) and other contaminants from water affected by the landfill.

In response to questions from Senator Gard, Mr. Hamilton said IDEM and the EPA will seek to recover these costs from the current owner, CBS/Westinghouse.

Mr. Hamilton also introduced LaKenya Johnson from IDEM's Office of Community Relations and Terry Coleman, first director of IDEM's Northern Indiana Regional Office, to the EQSC members.

Mr. Hamilton then discussed issues raised at previous EQSC meetings concerning use of money in dedicated funds to cover the costs of agency wide IDEM services. Mr. Hamilton said that approximately 150 federal and state accounts fund IDEM operations. He said that under the new system IDEM used to calculate its budget for the next biennium, an agency wide services adjustment of approximately 15% was applied to each of these accounts.

Mr. Hamilton continued by stating that IDEM also considered having employees who provide agency wide services keep detailed records of the time spent working in areas funded by specific accounts and then using these records to bill the specific accounts. Mr. Hamilton said this system would probably "exhaust IDEM" with all the accounting detail.

In response to questions from Representative Kruzan, Mr. Hamilton said he did not think it was illegal for one dedicated fund to "subsidize" the expenses of another dedicated fund. He said the law allows for payment of administrative expenses to be made from dedicated funds. He said IDEM legal staff had also examined this issue and did not think it was a problem.

The next person to testify was Dave Hensel, Assistant IDEM Commissioner for Legal Affairs. Mr. Hensel said that he believed "we are there" concerning negotiations with the EPA about Indiana's audit privilege law. He said the letter from Indiana Attorney General Jeff Modisett addressed most of the concerns EPA had with the Indiana statute. However, he said legislation would be needed to eliminate the Indiana audit privilege law's application to criminal matters and to make some small changes to the "interplay" with the public records law before the EPA would be completely satisfied.

Mr. Hamilton said IDEM would forward the Attorney General letter and the proposed statutory changes to the EPA on December 9. He said he then expected a response from the EPA that the Indiana audit privilege law was no longer an issue with the EPA. Mr. Hamilton added, however, that the "deal is off" with the EPA if the statutory changes are not made by the General Assembly.

Mr. Hamilton stated that he was "frustrated that the EPA put us through this." He said, up to this point, the Indiana audit privilege statute had never been invoked.

The next person to testify was Erika Seydel Cheney from IDEM's Office of Business and Legislative Relations. Ms. Cheney discussed IDEM's legislative agenda for the upcoming 1999 Session. She stated that, in addition to the audit privilege amendments just mentioned, IDEM would also be asking for changes to be made to the law concerning sewage hauler permits and changes to be made to some definitions found in Title 13 of the Indiana Code that were necessary to "satisfy the EPA."

Senator Gard indicated she was interested in getting additional funds for the brownfield program. Mr. Hamilton stated he did not know yet if IDEM would be asking for any additional money for that program.

Senator Gard also stated she would be introducing her bill concerning "technical corrections" to the brownfield law that passed the Senate in 1998 but not the House.

Randy Edgemon then presented a new final report from the EQSC Non-Point Source Pollution Subcommittee.² Mr. Edgemon said the Subcommittee recommended that EQSC support the "Clean Water Indiana" legislative initiative of the Association of Soil and Water Conservation Districts or any other legislation that seeks to reduce non-point source pollution during the 1999 Session of the Indiana General Assembly. He also said the report recommends that funding provided by the legislature should seek to increase state funding to the 92 soil and water conservation district operations from \$13,000 per year to \$23,000 per year, add up to \$2 million per year for cost-sharing of landowner's conservation practices, add at least \$2 million per year for additional technical staff at the districts, add \$2 million per year to hire 38 watershed coordinators, provide matching funds for local districts to hire district managers, and provide funds to the appropriate state agency to provide training for local watershed work.

Mr. Edgemon also said the Subcommittee report indicates the EQSC should recommend that the Indiana Department of Natural Resources (DNR), soil and water conservation districts, and Purdue University should work with federal conservation agencies and agriculture stakeholders to research, fashion, and implement voluntary grassy vegetative buffer zone initiatives for drains through farmlands and voluntary forested riparian buffer zone initiatives along stream edges.

Mr. Edgemon continued by stating the report recommends that the General Assembly

² A copy of the report is on file with the Legislative Information Center (see footnote 1).

should request the Commissioner of Agriculture to study and make recommendations concerning a coordinated program and appropriate state resources for technical assistance and cost-sharing for priority agriculture non-point source pollution challenges by November 1, 1999.

Mr. Edgemon concluded by stating the report also recommends that the General Assembly should request the IDEM Commissioner to convene a special task force of stakeholders to report by November 1, 1999, about the contribution to surface water pollution of existing and future septic tank systems in Indiana.

After a brief discussion concerning septic tank issues, Tim Method, IDEM's Deputy Commissioner for Environmental Results, stated the State Department of Health issues guidelines concerning design and construction of septic tanks systems. Mr. Edgemon stated he felt these guidelines were not being "universally administered."

Mr. Hamilton said that, even with the State Department of Health guidelines, many septic systems in the state were not working properly. Mr. Hamilton also said IDEM's current approach to non-point source pollution, including the use of watershed pilot projects, amounted to a "new ball game" for the agency. He said it was difficult for IDEM to currently know exactly what changes may need to be made to the way IDEM approaches non-point source pollution issues in the future. He added, however, that the Subcommittee report "hits a lot of key issues."

The EQSC members voted unanimously (by voice vote), with Mr. Hamilton abstaining, to adopt the Non-Point Source Subcommittee Report and recommendations.

Representative Kruzan then asked the EQSC to consider adopting the report from the Agricultural Buffer Zone Subcommittee presented to the EQSC at an earlier meeting.³ After a brief discussion, the EQSC members voted unanimously (by voice vote) to adopt the Agricultural Buffer Zone Subcommittee Report and recommendations.

Representative Kruzan then asked the EQSC to consider adopting the report from the IDEM Staffing Subcommittee presented to the EQSC at an earlier meeting.⁴

Tim Maloney from the Hoosier Environmental Council asked the EQSC to include a provision in the IDEM Staffing Subcommittee report that recommended that IDEM should delay the merger of the Office of Environmental Response with the Office of Solid and Hazardous Waste to create the "Office of Land" until after the external analysis of IDEM staffing recommended in the report was completed. Mr. Goodwin moved that the Subcommittee report with this recommended delay should be adopted by the EQSC.

³ A copy of the report is on file with the Legislative Information Center (see footnote 1).

⁴ A copy of the report is on file with the Legislative Information Center (see footnote 1).

Mr. Hamilton said that the issue for IDEM should be what IDEM was going to do to protect the environment over a given period of time instead of setting specific IDEM staff levels as recommended in the Subcommittee report. He said the merger to create the Office of Land should result in more clean up activities and better environmental protection. He said a delay now would be "disruptive" and he opposed the motion.

Mr. Goodwin stated IDEM should look at the direction it needs to go after an external analysis was completed. He added that IDEM staff reductions were not the direction that IDEM needed to go.

Mr. Hamilton said IDEM staff had not been reduced since he had been Commissioner. He said some unfunded, vacant positions had been eliminated. He also said the reorganization would not result in a reduction of IDEM staff but might result in the shifting of some positions within the agency.

After a brief discussion, Representative Kruzan said he would not recognize the motion to delay the merger of the Office of Environmental Response with the Office of Solid and Hazardous Waste since Senator Simpson, who was Chairperson of the IDEM Staffing Subcommittee, was not present to address the issue and the full Subcommittee had not had a chance to consider the issue.

The EQSC members voted unanimously (by roll call vote), with Mr. Hamilton abstaining, to adopt the IDEM Staffing Subcommittee Report and recommendations as previously presented to the EQSC.

Senator Gard asked that a vote not be taken on the Triennial Review recommendations previously submitted to the EQSC in reports from the Triennial Review and Audit Privilege Subcommittee. Senator Gard did ask that the text of the reports be included in the EQSC Final Report and that a copy of the Attorney General letter concerning Indiana's audit privilege law also be included in the Final Report. Representative Kruzan stated that this material would be in the EQSC Final Report.

Representative Kruzan then stated that EQSC and IDEM staff had contacted several people to provide testimony concerning the use of compressed natural gas in vehicles as described in Senator Zakas' Senate Resolution 42-1998 that the Legislative Council forwarded to the EQSC. He said that none of the people contacted could attend the meeting. Representative Kruzan said that the Indiana Department of Commerce had provided three documents that contained background information concerning the use of compressed natural gas and other alternative fuels in vehicles. He asked that these documents be distributed to EQSC members.⁵

After a brief discussion concerning the contents of the 1998 EQSC Final Report, the EQSC members voted unanimously (by voice vote) to approve the Final Report.

⁵ These documents are on file with the Legislative Information Center (see footnote 1).

In response to questions from Mr. Manders concerning problems with new development filling up natural flood plains, Tim Method stated that the DNR had jurisdiction over this matter. Bill Hayden from the Sierra Club stated that the DNR did not have any authority outside the floodway. He said problems outside the floodway were usually the concern of the Federal Emergency Management Agency and local governments. Mr. Hayden wondered if DNR authority in this area should be expanded.

In response to questions from Mr. Reding concerning confined feeding permits, Mr. Hamilton said that IDEM had issued 400 to 500 permits. He said he was not sure how many of these permit applications involved an extension of the time period IDEM had to process the applications. He added that IDEM could legally ask for an extension if an application was not complete.

Mr. Reding stated he had heard of several individual incidents where IDEM had not contacted a permit applicant about the need for additional application information until the very end of the processing period. Mr. Hamilton said he would look into any of these incidents he was told about. Mr. Hamilton added IDEM "should not wait until the very end" to contact applicants.

Mr. Reding also said the proposed confined feeding rules were "too close to home management." He said that earlier Mr. Hamilton had been opposed to being told specifically how to handle IDEM staffing in the IDEM Staffing Subcommittee report and confined feeding operators felt the same way about managing their operations. He said there was a need to "think long and hard" before passing final rules that resembled the proposed rules.

Mr. Hamilton responded by saying the confined feeding rules were "high profile" and "difficult." He said, however, that they were still in the early stages of adoption and not a "done deal." He agreed that much of what was in the proposed rules was similar to the IDEM confined feeding guidance document the agency had been using. However, he said that there had been enforcement problems with using the guidance document.

Mr. Hamilton also said the EPA had been discussing the use of National Pollutant Discharge Elimination System permits to regulate confined feeding operations. Mr. Hamilton said he felt most people would prefer some sort of Indiana regulatory program and not a program involving the use of federal wastewater permits.

In response to questions from Mr. Goodwin, Mr. Hamilton said he would forward a copy of his letter to EQSC members that responded to concerns Representative Cleo Duncan and several of her Ripley County constituents raised at an earlier EQSC meeting concerning the proposed construction of an asphalt plant in their community.

In response to questions from Ms. Mahoney, Mr. Hamilton said there was no formal public forum set up to address the IDEM reorganization discussed earlier in the meeting. However, he said he was willing to sit down and discuss the issue with any individual EQSC member.

Mr. Hayden and Glenn Pratt stated that they both appreciated the work the EQSC had done during the 1998 interim. Mr. Pratt also distributed a copy of a report he had prepared concerning the Wright Coal and Oil Voluntary Remediation Program (VRP) site in Indianapolis.⁶ He stated the VRP report contained several inaccuracies and "major flaws" that he wanted to bring to the attention of the EQSC.

Mr. Pratt stated that, if this specific VRP site was indicative of the way the VRP was being run in general, there were major problems with the program. He said more public involvement in VRP projects was needed and VRP staffing and policies may at least need "tuning."

Representative Kruzan asked IDEM to respond to Mr. Pratt's report and forward the response to EQSC members.

Representative Kruzan adjourned the meeting at 3:40 p.m.

⁶ A copy of the report is on file with the Legislative Information Center (see footnote 1).